

SETTLEMENT OF WAR CLAIMS

DECEMBER 14, 1926.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. GREEN of Iowa, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H. R. 15009]

The Committee on Ways and Means, to whom was referred the bill (H. R. 15009) to provide for the settlement of certain claims of American nationals against Germany and of German nationals against the United States, for the ultimate return of all property of German nationals held by the Alien Property Custodian, and for the equitable apportionment among all claimants of certain available funds, having considered the same, report it back to the House without amendment and recommend that the bill do pass.

I. INTRODUCTORY STATEMENT

During the World War an immense amount of property belonging to the citizens of Germany and also some belonging to the citizens of Austria and Hungary was seized by the Alien Property Custodian, acting under the authority of the trading with the enemy act. A large portion of this property was sold and the proceeds held by the Alien Property Custodian in lieu thereof. Some of it was retained and is still in the hands of the Alien Property Custodian.

In addition to the property taken over by the Alien Property Custodian, the United States Government itself had taken possession of all of the German ships which were in our harbors at the time the declaration of war against Germany was made, also of a radio station belonging to German nationals, and took over and proceeded to use whenever it desired a very large number of patents belonging to Germans. The value of this property has not so far been determined, but it has been generally understood, and our Government has proceeded in accordance with this understanding, that the damage done to German citizens by our Government taking over this property would be eventually made good.

At the close of the war American citizens presented claims against Germany for damages inflicted by that nation during the war period. While the policy of our Government had been such in the past that the general expectation was that the property held by the Alien Property Custodian would eventually be returned to its original owners, it would have been manifestly unjust to give no consideration to the claims of our own citizens having an equally good foundation, but which Germany was at the time in no condition to pay. By the treaty of Berlin signed in August, 1921, it was provided that the German property which had come under the control of the United States should be retained until such time as "suitable provision for the satisfaction of all claims" of American citizens against Germany shall have been made. In pursuance of the treaty an agreement was entered into for the establishment of a commission which should pass on the question of the validity and amount of the American claims. This body, called the Mixed Claims Commission, has proceeded with its work and passed upon nearly all the American claims—in fact a sufficient number—so that it can be approximately estimated what the total will be when judgments have been rendered in all the cases.

A situation thus arose under which the claims which were made for the return of the German property and the claims of American citizens against the German Government developed conflicting interests. It was highly important that some action should be taken for the relief of the claimants on both sides, but it was equally important that in so doing there should be no discrimination either in of favor or against the German claimants on the one hand or the American claimants on the other. The result was that those who were called upon to consider what action should be taken found themselves confronted with extremely complex and difficult questions. Five years have now elapsed and no action has been taken other than to provide that \$10,000 should be paid to each of the German claimants of property in the hands of the custodian whose claims were admitted up to that amount. At the last session of Congress a special effort was made for the solution of the problems presented. A number of bills were introduced, extensive hearings were held, and the whole matter was exhaustively discussed in committee, but it became evident that no plan had been thus far devised that was likely to meet with the approval of Congress and the matter went over until this fall, to be taken up by a special meeting of the Ways and Means Committee.

One of the principal objections to all the former plans was that they involved either a special appropriation beyond any liability of the Government itself or else the taking over of funds to be received for the payment of the expenses of our army of occupation in Germany, which would be in effect taking money from the Public Treasury for the payment of the claims of other parties. At the same time any bill introduced ought to provide for four major problems arising in connection with these war claims. It was essential, in the judgment of the committee, that the bill should provide for—

- (1) The settlement of the claims of the United States and its nationals against Germany and its nationals;
- (2) The settlement of the claims of Germany and its nationals against the United States and its nationals;

(3) The return of the property held by the Alien Property Custodian which was seized during the war as the private property of citizens of countries with which we were at war; and

(4) The temporary retention of sufficient of the German property to reasonably insure the payment of the American claims and the return of the property thus temporarily withheld as the American claims are paid.

But it was not practical to do this unless concessions and compromises should be made by the respective claimants. Recognizing this, these parties and their representatives voluntarily got together and agreed upon the concessions to be made by each. The bill introduced proposes to carry out this agreement. It is not claimed that in all instances it will effectuate exact justice but it is confidently asserted and it can hardly be disputed that it is for the interest of all of the parties concerned that it should be passed. It offers the only practical solution of the heretofore unsolved problems which have arisen in connection with this extremely difficult subject and if it should fail to be adopted every claimant realizes that it would mean the postponement for an indefinite period of any receipts whatever upon his claim.

II. MAIN FEATURES OF THE BILL

The bill has two main features:

First, it provides for the immediate payment in full of the claims of American nationals against Germany not in excess of \$100,000, or in respect of death or personal injury, and for the payment in full, but in installments, of the remainder of such claims; for the payment in the immediate future of 50 per cent of the claims of German nationals for the ships, patents, and radio stations, and for the payment of the remainder of such claims in installments, but the total amount is not to exceed \$100,000,000, less administrative expenses; for the immediate return of 80 per cent of German property held by the Alien Property Custodian, and for the eventual return of the remainder.

Second, it provides for the creation of a "special deposit account" from which will be made the payments above described, except that the payment of 80 per cent of German property held by the Alien Property Custodian will be made from the funds now in the hands of the Alien Property Custodian. The fund is composed of the following amounts: (1) Twenty per cent of the German property temporarily retained by the Alien Property Custodian (estimated at \$40,000,000); (2) the German share of the unallocated interest fund hereinafter described (approximately \$25,000,000); (3) payments heretofore or hereafter received from Germany under the Paris agreement in satisfaction of the awards of the Mixed Claims Commission (\$14,000,000 to date and \$10,700,000 a year hereafter); (4) an appropriation authorized to be made on amount equal to the awards for the ships, patents, and radio station, \$50,000,000 of which is to be immediately available. This makes a total of \$129,000,000 available shortly after the enactment of the act. It should be noted that none of the payments from Germany on account of the costs of the Army of Occupation are included in the fund, which will continue

to be covered into the Treasury of the United States to be available for the general expenses of the Government, and that no burden is placed upon the Treasury except for the payment of an existing debt.

III. OUTLINE OF PROBLEMS INVOLVED

There are three major problems involving the United States and its nationals and the German Government and its nationals arising out of the World War remaining unsettled:

(1) Property of German nationals was seized by the Alien Property Custodian, and a major part of it is still retained.

(2) Ships, patents, and a radio station belonging to German nationals were taken over and used by the United States, and the United States still owes compensation therefor; and

(3) American citizens suffered damages by reason of acts of the German Government during the war period, and their claims must be satisfied.

PROPERTY SEIZED BY THE ALIEN PROPERTY CUSTODIAN

Under the provisions of the trading with the enemy act approved October 6, 1917, the Alien Property Custodian was authorized to seize property in the United States belonging to enemies or allies of enemies as defined by that act, to be held until after the war, and any claim arising therefrom to be settled "as Congress shall direct." During the war period the Alien Property Custodian seized more than \$500,000,000 worth of property, including the property of American citizens or citizens of allied or neutral countries, which was wrongfully seized.

After the war numerous amendments to the trading with the enemy act were adopted by Congress authorizing the return to certain classes of "enemies" or "allies of enemies." The most important of these amendments was the Winslow Act which became a law on March 4, 1923, and which authorized the return to all enemies or allies of enemies of not more than \$10,000 of the principal of their money and other property seized and of not more than \$10,000 during any year of the income on their money and other property.

As a result of these various amendments and the return of property wrongfully seized, the property in the hands of the Alien Property Custodian to-day has been reduced to a value of approximately \$270,000,000. The legal status of, and the rights which the original owners have in, this property can only be determined by consideration of a number of factors.

The text of the trading with the enemy act as originally enacted, the reports of the committees accompanying the bill, the discussion on the floor of both Houses of Congress, and numerous court decisions under the original act, clearly indicate that the act contemplated sequestration rather than confiscation. The amendment of March 28, 1918, however, broadened the powers of the Alien Property Custodian so as to include the right to manage or sell the property "as though he were the absolute owner," and in the so-called Chemical Foundation case decided by the Supreme Court on October 11, 1926, the Supreme Court held that when any of the property was sold the former enemy owners were deprived of all rights in the property and

in the proceeds derived from the sale. Though it was unnecessary for the purposes of this particular decision, the language of the court is broad enough to be open to the construction that the seizure of property under the authority of the Trading with the Enemy Act, as amended, together with the applicable treaty provisions, deprived the owner of all rights, whether or not the property was sold, and that the property was virtually confiscated.

It is to be noted, however, that even if the property is held to have been confiscated, in spite of the clear intent of Congress to the contrary, Congress nevertheless has retained at all times absolute authority over this property and could at any time not only return it to the original owner but declare it to be held for the benefit of and for ultimate return to the original owner. This is apparently just what Congress did under the terms of the Winslow Act in providing that \$10,000 of the principal shall be returned to each individual owner and that thereafter the earnings or interest on the property remaining in the hands of the Alien Property Custodian shall be paid to the owner annually up to the sum of \$10,000. So that notwithstanding the undoubted power of Congress to confiscate, reaffirmed in the Chemical Foundation case, Congress not only has refused to exercise that power up to the present time, but has clearly by legislation asserted its policy to be the very contrary of confiscation.

It is fair to say that the primary reason for not returning all the alien property at the time of the adoption of the Winslow Act, was that Congress was under a duty to retain sufficient property as security until the German Government should make adequate provision for the settlement of the claims of American nationals against Germany and its nationals.

The treaty provisions governing the disposition of the alien property are to be found in part 10, article 297 of section 4 of the treaty or Versailles, the rights under which are specifically reserved to the United States under the preamble and article 2 of the treaty of Berlin. Under these provisions, the allied and associated powers reserved the right to liquidate the property of German nationals that had come into their hands, and to apply the proceeds to the settlement of claims of their own nationals against Germany, and to retain any property or the proceeds thereof not so used, and provided that any property or the proceeds thereof not used for the settlement of the claims of their own nationals should be credited to Germany on her reparation obligations.

The preamble to the treaty of Berlin includes in full the provisions of the joint resolution of Congress approved July 2, 1921, section 5 of which provides that all the property of German nationals held by the United States Government "shall be retained by the United States of America and no disposition thereof made except as shall have been heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government * * * shall have made suitable provision for the satisfaction of all claims against such Government." Article 2 of this treaty provides that the rights and advantages stipulated in part 10 of the treaty of Versailles shall be enjoyed by the United States, but that "in availing itself of the rights and advantages stipulated in the treaty of Ver-

sailles the United States will do so in a manner consistent with the rights accorded to Germany under such provisions."

It is apparent that the language of the preamble to the treaty of Berlin under which the United States reserves the right to retain the property until suitable provision has been made for the settlement of American claims is inconsistent with its rights under article 2 of the treaty which, by reference to part 10 of the treaty of Versailles, specifically gives the United States the right to liquidate the property and to apply the proceeds to payment of claims of American nationals against the German Government. The only interpretation which will reconcile these provisions is that the United States specifically reserved the right to use the German property for the settlement of American claims only if suitable provision were not made by the German Government for the settlement of American claims.

It is very important to note, however, that the United States Government can not retain any property belonging to German nationals without giving credit to the German Government for that property on Germany's reparation payments and can not liquidate German property and apply it to the payment of the claims of American nationals without giving credit to the German Government on its reparation payments for the excess of the proceeds not so used.

CLAIMS OF GERMAN NATIONALS AGAINST THE UNITED STATES

Claims of German nationals against the United States Government for damages arising from acts of the United States during the war period divide themselves into three main groups: (1) Ships seized by the United States, (2) a radio station sold to the United States, and (3) patents sold to or used by the United States.

(1) *Ships*.—The ships were seized and title to them acquired by the United States under the authority of the joint resolution of Congress adopted May 12, 1917, which authorized the President to take possession and title to any vessel within our jurisdiction belonging to a citizen or the subject of any nation with which we were at war, provided for the appointment of a board of survey to ascertain their value, and which provided that the findings of the board were to be considered as competent evidence on any claim for compensation.

Some of the ships have been sold, some chartered, some were destroyed during the war, some have been scrapped, and the balance are still being operated by agencies of the United States Government.

Whatever legal rights for compensation the original owners may have had were wiped out by the provisions of the treaty of Versailles adopted by the treaty of Berlin, though it must be pointed out that the language of the preamble to the treaty of Berlin, as in the case of the alien property, says that any property belonging to German nationals held by the United States Government shall be retained until the German Government has made suitable provisions for the settlement of American claims. Moreover, as pointed out above, it is clear that if the United States Government retains the ships without compensation it must credit the German Government with the value of the ships on the reparation payments due by the German Government to the United States. The effect, therefore, of retaining these ships without compensation would be to reduce the amount of reparations payable by Germany for the benefit of individual American citizens having claims against the German Government, and to

that extent would mean that the United States was profiting at the expense of its own citizens unless Congress appropriated a corresponding amount for use in paying the claims of American nationals.

(2) *Radio stations.*—The possession of two radio stations (Sayville and Tuckerton) was taken over by the United States after the outbreak of the World War, apparently under the authority granted the President by the radio communication act of August 12, 1912. The possession of the Tuckerton station was taken by the Navy on September 9, 1914. It developed that this station was owned by non-enemies, but that certain enemies had liens upon it under construction contracts and otherwise. The Alien Property Custodian seized and later sold all these enemy interests to a private corporation. The proposed bill therefore does not provide for compensation by the United States on account of this station.

The Sayville station was owned by a New York corporation, the stock of which was beneficially owned by enemies. The station was leased to the United States Government in 1915 and was being operated by the Navy Department in 1917. The Alien Property Custodian seized all the stock of the New York corporation and installed directors and managed the corporation. The directors so installed by the Alien Property Custodian sold the station to the United States and the New York corporation was dissolved. The consideration paid by the United States (approximately \$45,000 for the plant) was paid to the Alien Property Custodian for the benefit of the former enemy owners of the stock. The bill proposes to determine the compensation which should have been paid by the United States for this station.

(3) *Patents.*—Patents fall into two classes: (1) Those used by the United States prior to the acquisition by the United States of any license to use, and (2) patents sold or licensed by the Alien Property Custodian to the United States. It is proposed to determine the compensation which should be paid for both classes of patents.

CLAIMS OF AMERICAN NATIONALS

During the war the German Government seized and sequestered property of American citizens in Germany. Moreover, even prior to our formal entrance into the war, war regulations of the German Government made it impossible for our citizens to withdraw much of their property from Germany, more specifically bank deposits and securities. And finally, American citizens have valid claims for damages against the German Government for acts of violence, such as the sinking of ships, the destruction of property, the loss of lives, and personal injuries.

By an agreement dated August 10, 1922, between the United States Government and Germany a Mixed Claims Commission was set up, consisting of one commissioner to be appointed by each Government and an umpire to be selected by agreement between the two Governments, to adjudicate claims of American citizens against the German Government, as specified therein. It is worth noting that the umpire agreed to by the German Government is an American citizen—Judge Parker, of Texas. By an exchange of notes, also dated August 10, 1922, it was provided that all claims should be filed within six months after formal organization of the commission. The commission was organized on October 9, 1922.

The commission has to date made 2,536 awards, aggregating with interest \$139,263,551. In addition the United States Government has received an award of \$59,198,995, including interest to January 1, 1927. It is estimated that the awards yet to be allowed will aggregate with interest to January 1, 1927, \$40,000,000, making a total of awards already made and to be made on behalf of American nationals of \$179,263,551.

The decisions of the Mixed Claims Commission are final and binding upon the two Governments, and the awards of the Mixed Claims Commission constitute a direct obligation of the Government of Germany.

Under the treaty of Versailles Germany obligated herself to pay reparations to the allied and associated powers in an amount to be fixed by the Reparations Commission. The amount was fixed by the Reparations Commission at 132,000,000,000 gold marks, which amount was subsequently found to be largely in excess of Germany's ability to pay. In 1924 the powers entitled to reparations under the treaty of Versailles, the decisions of the Reparations Commission, and the various agreements made by those powers subsequent to the adoption of the treaty of Versailles, but not including the United States, signed on August 30, 1924, what is known as the London protocol, under the terms of which the so-called Dawes plan of payment was adopted. The Dawes plan limited the payments to be made by Germany for the purpose of meeting "all amounts for which Germany may be liable to the allied and associated powers for the costs arising out of the war," including reparation payments, to certain fixed amounts rising gradually over a period of years and reaching the sum of 2,500,000,000 gold marks in the fifth or "standard" year. Subsequently, on January 14, 1925, the representatives of the Governments of Belgium, Great Britain, France, the United States, Italy, Japan, Brazil, Greece, Poland, Portugal, Rumania, Serbia, and Czechoslovakia signed what is known as the Paris agreement, under the terms of which the Dawes annuities paid by the German Government to the Reparations Commission were allocated to the governments having claims against Germany.

Under article 3 of the Paris agreement the United States Government is entitled to receive $2\frac{1}{4}$ per cent, but not exceeding 45,000,000 gold marks a year, of all receipts from Germany on account of the Dawes annuities available for distribution as reparations for the purpose of satisfying the awards of the Mixed Claims Commission. When the Dawes annuities reach their maximum the United States Government will receive from the Reparations Commission approximately \$10,700,000 a year for the purpose of satisfying claimants who have received awards from the Mixed Claims Commission.

It is obvious that it will take a very long period of years, approximately three-quarters of a century, to liquidate the private claims alone, claims which aggregate practically \$180,000,000, with interest at 5 per cent, through the medium of so limited a payment as \$10,700,000 a year.

The situation is an extraordinarily complex and difficult one to solve with justice to all concerned. If nothing is done, that is, if the United States retains the alien property until American claims have been satisfied and retains the ships without compensation therefor, both

German and American claimants will suffer practical confiscation of their property or rightful claims, for the loss of the use of property over as long a period as 70 or 80 years is clearly not very different from complete loss in so far as this and the next generation are concerned. Moreover as pointed out above, should the United States Government retain the ships without paying compensation therefor, the value of the ships must be credited to Germany on our reparation payments and the fund available for the payment of American claimants will be diminished by that amount and might well be reduced by over a half.

Failure on the part of Congress, therefore, to deal with the situation will not only result in tying up indefinitely property that should be fruitfully employed, but will result in a very great loss to thousands of innocent individuals including American citizens who have the right to look to their Government for protection.

Many plans have been suggested, but nearly all of them are modifications of two basic proposals.

The first of these contemplates the retention and liquidation of the German property held by the Alien Property Custodian and the application of the proceeds to the settlement of the American claims, or in other words, the confiscation of the property of German citizens for the purpose of paying the claims of American citizens against the German Government.

The second basic plan was contained in what was known as the Mills bill introduced last spring. It provided for the immediate return of all property held by the Alien Property Custodian to its rightful owners and for the settlement of the claims of American citizens by an advance from the Treasury, the said advance to be repaid from the funds received by the United States Government from the Reparation Commission in payment of the costs of the army of occupation and the $2\frac{1}{4}$ per cent of the Dawes annuities allocated to the settlement of private American claims. It estimated that the advance would have been repaid in eight years. The bill further provided for the immediate payment by the United States Government of the just claims which German citizens had against the United States Government by reason of the seizure of ships, radio stations, and patents in an amount not to exceed \$100,000,000. Serious opposition developed to this plan on the ground that the Government of the United States should not advance money for the payment of claims owned by the German Government, and after careful consideration the committee rejected this proposal.

If the German property is to be returned to its rightful owners in accordance with what we conceive to be our established policy, and if at the same time the United States Government is to assume no responsibility in making provision for the payment of the just claims of its own nationals, it is apparent that no solution is possible except by compromise, a compromise which while it involves material concessions on the part of all interested parties, need not sacrifice fundamental principles of justice and morality.

It has been contended by some that the claims of American citizens which were not filed before the Mixed Claims Commission within the time prescribed under the agreement creating the commission should now be provided for by extending the period of time. This agreement, however, is an agreement between the United States and Germany which can not be modified by the Congress.

It was contended before the committee that the bill should provide for the immediate return of Austrian and Hungarian property held by the Alien Property Custodian. However, it is impossible at the present time to settle all of the problems between the United States and Austria-Hungary. For example, the period within which the claims of American nationals against these Governments must be presented has not yet expired, and, consequently, no estimate of the probable amount of awards can be made. The bill does provide, however, for the return of the property of the Austro-Hungarian Bank, which is now in the hands of liquidators, in order that the liquidation may be completed. The return is upon condition, however, that the funds distributable to Austria or Hungary will be returned to the Alien Property Custodian.

IV. DETAILED EXPLANATION OF CERTAIN PROVISIONS OF THE BILL CLAIMS OF AMERICAN NATIONALS AGAINST GERMANY

Section 3 of the bill provides for the certification by the Secretary of State of the Secretary of the Treasury of the awards of the Mixed Claims Commission. These awards are made to the United States on behalf of the individual claimant. They are in effect a claim of the United States against Germany, just as all other claims of American citizens against a foreign government. The Secretary of the Treasury is then authorized to make payments to the persons on behalf of whom the awards were entered, in the amounts and in the order of priority specified in section 5.

Where a claim against Germany was assigned prior to the entry of the award by the Mixed Claims Commission, the commission would enter the award, if due notice was given, in the name of the assignee. Under the provisions of the section this is the only assignment which is recognized, except that in the case an assignment of the award, including an assignment of any part of the award, by a receiver or trustee duly appointed by a court in the United States, the payment of the amount so assigned will be made to the assignee.

CLAIMS OF GERMAN NATIONALS AGAINST UNITED STATES

Section 4 of the bill provides for the appointment of an arbiter to hear the claims of German nationals and to make awards of the fair compensation to be paid by the United States for vessels, patents, and the radio station hereinafter described. It is expected that the proceedings will be informal, that many cases will be settled upon stipulation or compromise, and that formal hearing will be afforded only when necessary. The arbiter is given power to appoint referees in order that his decisions may be expedited in every possible manner. Assignment is prohibited, except in case of assignment by a receiver or trustee as in the case of awards of the Mixed Claims Commission.

The rules of compensation are prescribed so as to give to the claimant the fair value of the property to him. In the case of the ships, for example, the board of survey appointed by the Secretary of the Navy under the joint resolution fixed an aggregate value of approximately \$33,000,000 for all the vessels. In a suit against the United States the owners of vessels claimed their value to be over

\$250,000,000. It is probable that the value to the owners was considerably less than the latter sum and possibly more than the former. The rule prescribed in the bill is intended to approximate the price which a willing purchaser would pay for the vessel immediately prior to the time possession was taken by the United States, realizing that the ship could not be delivered until after the termination of the war and that the war would not terminate before July 2, 1921. In each case it is provided that any compensation already paid by the United States should be deducted from the compensation determined by the arbiter, in order to safeguard the United States against any payments prior to the payments of the award.

In the case of patents described in paragraph (3) of subdivision (b) of section 4, which were licensed, sold, or assigned by the Alien Property Custodian to the United States, an aggregate amount of approximately \$105,000 was paid by the United States to the Alien Property Custodian and is still held by him, unallocated to any particular patent. In order to relieve the Alien Property Custodian of allocating this amount, it is provided (under section 28 of the trading with the enemy act which is added by this act) that the custodian shall return this amount to the United States and that the arbiter will then determine and award the full compensation. Many of the patents were used prior to the seizure by the Alien Property Custodian. This class of patents is covered by paragraph (4) of subdivision (b) and if the patent was ultimately seized by the Alien Property Custodian compensation will be paid for all use, before or after seizure, excluding use between the declaration of war and the armistice, until the patent was disposed of by the Alien Property Custodian. If it was licensed, assigned, or sold to a private party no further compensation by the United States will be paid. If it was licensed, assigned, or sold to the United States, the compensation will be determined under paragraph (3).

Inasmuch as the machinery set up in the bill will be available, it is provided that the claims of Austrian and Hungarian nationals in respect of ships and patents (there was no radio station belonging to them which was taken over) will also be adjudicated by the arbiter.

Inasmuch as the present situation does not permit a settlement of all the problems arising out of the war and existing between the United States and Austria and Hungary, it is provided that the arbiter shall only enter tentative awards and certify these awards to the Secretary of State in order that they will be available when these problems are ultimately disposed of.

RETURN OF PROPERTY HELD BY THE ALIEN PROPERTY CUSTODIAN

The provisions of the bill providing for the return to German nationals of the property held by the Alien Property Custodian are in the form of amendments to the trading with the enemy act. Under existing law a large number of former enemies and allies of enemies are entitled to the return of all their property, and the remaining classes are entitled to the return of \$10,000 of principal and \$10,000 in any one year of income. Under the present law income has accrued because of the limitation of the return of \$10,000 in any one year. Under existing law, however, if the income in any future year falls below this amount, the balance is payable out of the accrued

income. The proposed bill does not affect any of the rights of persons under existing law, so that property now returnable or income now payable may be returned or paid without regard to the amendments.

Under the provisions of subsection (d) of section 9 of the existing law, a "nonenemy" heir of an enemy whose property was seized by the Alien Property Custodian is not entitled to the return of his share of the estate. Under subsection (g) of this section it is provided that if the heir happens to be an American citizen he is entitled to his share. Section 10 of the proposed bill amends subsection (g) so as to permit the return of property to any person eligible as a claimant under subsection (a), (b), or (n). Subsection (d) is amended to permit the return to a foreign executor or administrator without the necessity of an appointment by a court in the United States, which requirement was imposed by the Alien Property Custodian. The requirement of the appointment by a court in the United States under subsection (g) was imposed by the statute. This latter provision is removed from the statute, in order that the Alien Property Custodian may make the return as in (d), as amended by the proposed bill.

Under the existing law a creditor of a person whose property was seized by the Alien Property Custodian may file a claim and institute proceedings for the payment of the debt, under certain conditions. Inasmuch as these claimants have had more than nine years in which to file their claims, this provision is amended by subdivision (b) of section 10 of the proposed bill so as to permit payment only where the claim was filed prior to the date of the enactment of the bill.

Under subsection (j) of section 9 of the existing law no patent could be returned which had been sold, licensed, or otherwise disposed of or which was involved in litigation, nor could the proceeds from the sale, license, or other disposition of any such patent be returned. The decision in the Chemical Foundation case now permits return of all patents still held by the Alien Property Custodian. Subsection (j) of section 9 of the existing law is accordingly amended to comprise two subsections, the first of which provides for the return of patents which have been licensed, subject to any existing license, contract, lien, or encumbrance, and the second of which provides for the return of the proceeds received from the sale, license, or other disposition. These subsections do not affect the sale to the Chemical Foundation nor the consideration received upon that sale.

Under subsection (f) of section 10 of the existing law the Alien Property Custodian has instituted certain suits as the "owner" of certain patents. In the event that it should ultimately be held that the suits were properly instituted the amendment proposed by the bill provides that section 9 shall apply to any royalties paid to him.

Section 12 of the proposed bill adds several new subsections to section 9 of existing law.

Subsection (m) provides for the return of the 80 per cent to the German national if he consents to the retention of 20 per cent. The 20 per cent will be deducted from any money or from the proceeds of property if he consents to the sale, or by the payment of the amount by him to the Alien Property Custodian. In anticipation of a final disposition of the matter, it is provided that the Alien

Property Custodian may sell sufficient property without the consent of the owner after the expiration of six years.

Subsection (n) meets the situation which has arisen by reason of the fact that certain corporate interests were seized without obtaining custody of the certificate evidencing those interests. As a result the certificate has been sold in Germany and is being dealt in daily on the German exchanges. Although the committee was convinced that it could not adopt a policy of general recognition of assignments, it seemed imperative that this situation be met. Accordingly, subsection (n) provides for the recognition of the various assignments and for payment to the present owner of the certificate. In order to prevent evasion, however, it is necessary to limit the return, irrespective of the citizenship of the present owner, to the 80 per cent. This subsection also adopts all the provisions of section 9; accordingly, a person entitled to a return under this subsection may file claim and bring suit, and, in the event of his death, his legal representative may file a claim or bring suit, and the provisions requiring a release and prescribing the effect of the release will be applicable.

Subsection (o) saves all existing rights under the present law. Section 22 of the existing law prohibits the return "under the provisions of this act" to a fugitive from justice. This section accordingly will remain applicable after the adoption of the proposed bill.

UNALLOCATED INTEREST FUND

A fund of approximately \$32,800,000 (commonly called the "unallocated interest fund") exists in the Treasury as a result of interest paid upon bonds purchased with money deposited in the Treasury by the Alien Property Custodian and accruing prior to March 4, 1923, together with the gain derived from sale of such bonds, and the earnings upon the earnings. Under the Winslow Act only earnings accruing after March 4, 1923, upon money deposited in the Treasury have been returned. This fund consists of earnings owing to American citizens, citizens of allied and neutral countries, citizens of countries with which we were at war but which prior to the war became allies, and citizens of Germany, Austria, and Austria-Hungary.

The Supreme Court decided, in *Henkels v. Sutherland* (May 24, 1926), that the American citizen is entitled to his share of the earnings, and this decision is undoubtedly applicable to citizens of allied or neutral countries. The proposed bill extends the principle to all others and provides for the allocation of all such earnings among all persons whose money was deposited in the Treasury. The earnings attributable to the money of German nationals (whether or not all their money and property has been returned) is paid into the special deposit account and noninterest-bearing participating certificates issued therefor. In the case of earnings attributable to money of Austrians, Hungarians, and Austro-Hungarians, the amount is allocated to his trust, to await disposition when Congress settles all the problems in respect thereof. In all other cases the payment will be made directly to the person entitled thereto.

FURTHER SEIZURES PROHIBITED

The Alien Property Custodian has outstanding demands for the conveyance of property to him in which the enemy or ally of enemy at the time of seizure had only a future interest. He is also collecting all income upon the property which he holds. The proposed bill adds a new section to the trading with the enemy act prohibiting further payment to the Alien Property Custodian and making all demands (whether or not suit for the enforcement thereof has been instituted) unenforceable after the date of the enactment of the bill, unless the written consent of the person entitled to the money or property is filed with the Alien Property Custodian. Unless this consent is filed, accordingly, all outstanding demands will be released, and all income will be payable to the person who would be entitled to it if no seizure had been made. A provision permitting payment with the written consent of such person is necessary in order to protect him in cases where he would be unable to enforce his rights.

DEFINITIONS

Section 15 of the proposed bill defines certain terms used in the bill. These definitions, of course, are not applicable to terms used in the trading with the enemy act.

Summary of statistics

ESTIMATED AMOUNT OF MIXED CLAIMS AWARDS TO BE PAID

1. 391 death and personal injury claims-----	\$3, 134, 003. 00	
Interest at 5 per cent thereon to Jan. 1, 1927-----	496, 217. 14	
Total allowed to Nov. 8, 1926, with interest to Jan. 1, 1927-----		\$3, 630, 220. 14
2. 2,142 awards of \$100,000 and less-----	12, 725, 110. 03	
Interest at 5 per cent thereon to Jan. 1, 1927-----	5, 484, 963. 72	
Total allowed to Nov. 8, 1926, with interest to Jan. 1, 1927-----	18, 210, 073. 75	
Estimated yet to be allowed:		
Principal-----	\$8, 500, 000	
Interest to Jan. 1, 1927-----	3, 500, 000	
	12, 000, 000. 00	
		30, 210, 073. 75
3. 153 awards over \$100,000-----	83, 460, 504. 69	
Interest at 5 per cent to Jan. 1, 1927-----	33, 962, 752. 82	
Total allowed to Nov. 8, 1926, with interest to Jan. 1, 1927-----	117, 423, 257. 51	
25 estimated yet to be allowed:		
Principal-----	\$20, 000, 000	
Interest to Jan. 1, 1927-----	8, 000, 000	
	28, 000, 000. 00	
		145, 423, 257. 51
Total estimated awards with interest-----		179, 263, 551. 40

ESTIMATED CREDITS TO SPECIAL DEPOSIT ACCOUNT

1. 20 per cent of German property (A. P. C.) to be temporarily retained.....	\$40,000,000.00
2. German share of unallocated interest fund.....	25,000,000.00
3. Mixed claims receipts— $2\frac{1}{4}$ per cent to Sept. 1, 1927.....	14,000,000.00
4. One-half appropriation for ships, radio stations.....	25,000,000.00
Total available for expenditures.....	\$104,000,000.00

ESTIMATED EXPENDITURES FROM SPECIAL DEPOSIT ACCOUNT

1. Death and personal injury claims in full..	\$3,630,220.14
2. All awards up to and including \$100,000..	30,210,073.75
3. \$100,000 each on all other awards (178) ..	17,800,000.00
	51,640,293.89
Assuming payments are to be made Sept. 1, 1927, add interest at 5 per cent from Jan. 1, 1927.....	1,721,000.00
	53,361,293.89
Interest at 5 per cent from Jan. 1, 1927, to Sept. 1, 1927, on balance of 80 per cent (\$143,400,000—\$51,640,293.89).....	3,059,000.00
Balance to be apportioned on claims over \$100,000.....	47,579,706.11
	104,000,000.00
80 per cent of total mixed claims awards (\$179,263,551.40) ..	143,400,000.00
Interest at 5 per cent thereon from Jan. 1, 1927, to Sept. 1, 1927.....	4,780,000.00
	148,180,000.00
Total available receipts to be applied on account as of Sept. 1, 1927.....	104,000,000.00
Balance of unpaid awards (80 per cent) subject to priority in Dawes annuities received after Sept. 1, 1927.....	44,180,000.00
Interest on this balance at 5 per cent from Sept. 1, 1927, to Sept. 1, 1928.....	2,210,000.00
Total priority due end of fourth Dawes year (1928) ..	46,390,000.00
Dawes annuity for 1928.....	\$7,000,000.00
One-half additional appropriation for ships, radio stations, etc.....	25,000,000.00
	32,000,000.00
Balance of priority unpaid Sept. 1, 1928.....	14,390,000.00
Interest at 5 per cent on this balance from Sept. 1, 1928, to Sept. 1, 1929.....	720,000.00
Total priority due end of fifth Dawes year (1929) ..	15,110,000.00
Dawes annuity for 1929.....	10,700,000.00
Balance of priority unpaid Sept. 1, 1929, to be paid out of Dawes annuity for 1930.....	4,410,000.00
Interest at 5 per cent on this balance from Sept. 1, 1929, to Sept. 1, 1930.....	220,000.00
	4,630,000.00

(a) Interest at 5 per cent from Jan. 1, 1927, to Sept. 1, 1930, on \$36,000,000 (20 per cent) $2\frac{1}{4}$ per cent mixed claims awards deferred.....	\$6, 600, 000	
(b) Interest at 5 per cent from Sept. 1, 1927, to Sept. 1, 1930, on \$40,000,000 participating certificates delivered to Alien Property Custodian for 20 per cent of German property retained.....	6, 000, 000	
(c) Interest at 5 per cent from Sept. 1, 1928, to Sept. 1, 1930, on \$50,000,000 due ship, radio station, etc., claimants for one-half appropriation used to pay mixed claims ($2\frac{1}{4}$ per cent) (assumed all awards to be allowed as of Sept. 1, 1928).....	5, 000, 000	\$17, 600, 000. 00
Total.....		22, 230, 000. 00
Dawes annuity for 1930.....		10, 700, 000. 00
Balance accrued interest to Sept. 1, 1930, under (a), (b), and (c) above.....		11, 530, 000. 00
Interest at 5 per cent from Sept. 1, 1930, to Sept. 1, 1931, on principal set out under (a), (b), and (c) above.....		6, 300, 000. 00
Total interest due on Sept. 1, 1931.....		17, 830, 000. 00
Dawes annuity for 1931.....		10, 700, 000. 00
Balance of accrued interest to Sept. 1, 1930, under (a), (b), and (c) above.....		7, 130, 000. 00
Interest at 5 per cent from Sept. 1, 1931, to Sept. 1, 1932, on principal set out under (a), (b), and (c) above.....		6, 300, 000. 00
Total interest due on Sept. 1, 1932.....		13, 430, 000. 00
Dawes annuity for 1932.....		10, 700, 000. 00
Balance accrued interest to Sept. 1, 1930, under (a), (b), and (c) above.....		2, 730, 000. 00
Interest at 5 per cent from Sept. 1, 1932, to Sept. 1, 1933, on principal set out under (a), (b), and (c) above.....		6, 300, 000. 00
Total interest due Sept. 1, 1933.....		9, 030, 000. 00
Dawes annuity for 1933.....		10, 700, 000. 00
Balance of 1933 Dawes annuity remaining to be applied Sept. 1, 1933, to principal of deferred amounts under (a), (b), and (c) above.....		1, 670, 000. 00

\$126,000,000—\$1,670,000=\$124,330,000. To amortize \$124,330,000 at 5 per cent out of an annuity of \$10,700,000 will require approximately 18 years after September 1, 1933.

Total time required (approximate)—

To pay off $2\frac{1}{4}$ per cent priority mixed claims, together with interest thereon and interest on deferred amounts.....	Years 6
To pay off principal of \$124,330,000 with interest.....	18
To pay off \$25,000,000 unallocated interest fund, without interest.....	$2\frac{1}{3}$
From and after Sept. 1, 1927.....	$26\frac{1}{3}$

Deferred payments

Mixed claims, $2\frac{1}{4}$ per cent, 20 per cent of \$179,263,551.40.....	\$36, 000, 000
German property, Alien Property Custodian:	
Estimated value of money and property now held.....	\$250, 000, 000
Deduct—	
Unallocated interest fund.....	\$25, 000, 000
Earnings undistributed.....	17, 000, 000
	42, 000, 000
20 per cent of.....	208, 000, 000
	40, 000, 000
One-half appropriations made available to pay ships, radio stations, etc. (\$100,000,000).....	50, 000, 000
	126, 000, 000